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NOTES

CRIMINAL PROCEDURE—JURISDICTION OF STATE OVER EXTRA-TERRITORIAL CRIMES COMMITTED BY ITS CITIZENS—There is a general proposition of criminal law which has been so frequently reiterated and so generally accepted without question that it has become almost axiomatic. It is, that crimes are purely local and punishable only in the jurisdiction where committed. As a broad statement of the law, this is true, but there is one important phase of the situation which seems to have been so engulfed by the very generality of this proposition, that it has been lost sight of by members of the bar, and has allowed some of our courts to go astray in its application, or rather non-application. An excellent example of this failure to discern one of the basic principles of government is the late New Jersey case of *State* v. *Stow*,[1] holding that a citizen of New Jersey who, in Pennsylvania, committed an offense against the election laws of the former state, nevertheless cannot be punished in New Jersey because the crime was not there committed.

The contention upon which the criticism of this case is rested is, that a state has control not only over all property and persons

[1] State v. Stow, 84 Atl. Rep. 1063 (N. J., 1912).

within its territory, but also over the person of its own citizens, no matter where they be. This is one of the fundamental incidents of sovereignty which cannot be doubted.[2] But its corollary, which should be equally as clear, has failed of recognition in many courts. This is, that a state may take jurisdiction of and punish, for a crime committed outside its territory, one of its own citizens, where the crime was against its own laws.[3] This rule is not recognized at common law,[4] although it does seem that the ancient Court of the Constable and Marshal exercised just such power.[5] But this jurisdiction may be conferred by statute, provided the constitution of the state does not prohibit. There does not seem to be any valid objection other than that of constitutionality which could be raised to such legislation. Public policy cannot stand in the way because, after all, that is the creation and creature of the legislature. The argument could be made that a state might even go so far as to punish acts committed against it in another state by persons *not* its own citizens. In fact, a Texas statute which did just that thing was held valid.[6] But the early North Carolina case of *State* v. *Knight*[7] points out the theory of government opposed to any such legislation. The court says: "The right of punishing, being founded upon the consent of the citizens, express or implied, cannot be directed against those who never were citizens, and who likewise committed the offense beyond the territorial limits of the state claiming jurisdiction."

England's statutes give jurisdiction for offenses committed outside its boundaries by its citizens in the case of treason,[8] murder or manslaughter,[9] bigamy,[10] and offenses against such special acts as the Foreign Marriage Act,[11] the Foreign Enlistment Act,[12] the Official Secrets Act[13] and the Explosive Substances Act,[14] etc. There are many such statutes, both federal and state, in the United States.[15]

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[2] Story on Conflict of Laws, Sect. 22.

[3] Commonwealth v. Kunzmann, 41 Pa. 429 (1862).

[4] Lord Brougham in Warrender v. Warrender, 9 Bligh 89 (Eng., 1834) at P. 119 says: "The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of that jurisdiction."

[5] Coke, 3 Inst. 48: "If two of the king's subjects go over into a foreign realm and fight there, and the one kill the other, this murder being done out of the realm, cannot be for want of trial heard and determined by the common law, but it may be heard and determined before the constable and marshal."

[6] Hanks v. State, 13 Tex. App. 289 (1882). This statute subjected to punishment *any* person who, within or without the state, forged any instrument affecting the title of land in Texas.

[7] State v. Knight, 1 Taylor's North Carolina Rep. 65 (1799).

[8] Statute 35 Hen VIII, c. 2, s. 1 (1543).

[9] 24 and 25 Vict., c. 100, s. 9 (1861).

[10] 24 and 25 Vict., c. 100, s. 57 (1861).

[11] 55 and 56 Vict., c. 23, s. 15 (1892).

[12] 33 and 34 Vict., c. 19, ss. 16, 17 (1870).

[13] 52 and 53 Vict., c. 10, s. 9 (1889).

[14] 46 and 47 Vict., c. 3, s. 7 (1883).

[15] See Hanks v. State, 13 Tex. App. 289 (1882); State v. Haskell, 33 Maine 127 (1851); People v. Botkin, 132 Cal. 231 (1901); Commonwealth v. Gaines, 2 Va. Cas. 172 (1819); 1 Bishop New Cr. Law, Sect. 121; 3 U. S. Comp. Stat. [1901], Sect. 5335.

There is some strong dissent in the United States to the proposition here contended for. The leading case for the stand against punishing *extra*-territorial crimes is *People* v. *Merrill*[16] in New York. In that case, a state statute provided for the punishment of anyone who should sell a negro that had been kidnapped from the state. The court refused to give it force as applied to a sale outside the state. Other cases oppose the doctrine just as strongly,[17] so that there is no uniformity on the question in the states, however clear it should be from the point of view of logic and the theory of government. But on just one point, practically every sovereignty agrees. That is, that it has the power to punish for all crimes done on a ship under its flag, whether in its own waters, on the high seas, or in foreign ports,[18] even though the foreign state may also have jurisdiction over the crime.[19]

J. F. N.

EVIDENCE—PROOF OF ONE SEXUAL CRIME AT A TRIAL FOR ANOTHER—In *People* v. *Gibson*,[1] a prosecution for statutory rape, evidence that the accused had sexual intercourse with a playmate of prosecutrix in the same room a few minutes after the act charged was not admitted, on the ground that the two acts were not so connected as to be part of the same transaction.

"The general rule is that on a prosecution for a particular crime evidence which in any manner shows or tends to show that the accused has committed another crime wholly independent of that for which he is on trial, even though it be a crime of the same sort, is irrelevant and inadmissible."[2] That is a principle to which no court will dissent, but it is upon the application of the exceptions to the general rule that the courts differ. The following exceptions may be regarded as the most important, being those which are included in the classification given by most authorities.[3] Evidence of other offenses is admissible if such offenses are relevant (1) as part of the *res gestae*, or to prove or show (2) identity of person or crime, (3) knowledge, (4) intent, (5) motive, (6) system or scheme, (7) malice. There must be some logical and natural connection between the extraneous crime offered in evidence and the crime charged, and whether the connection necessary to render it relevant and admissible exists is a question for the trial judge to determine. If the evidence be so dubious that the judge does not clearly per-

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[16] People v. Merrill, 2 Parker's N. Y. Cr. Rep. 590 (1855).

[17] U. S. v. Smiley, 6 Sawyer 640 (U. S. C. C., 1864); Johnson v. Commonwealth, 86 Ky. 122 (1887); Cruthers v. State, 161 Ind. 139 (1903); State v. Cutshall, 110 N. C. 538 (1892).

[18] Reg. v. Armstrong, 13 Cox C. C. 184 (Eng., 1875); Reg. v. Anderson, 11 Cox C. C. 198 (Eng., 1868).

[19] Wildenhus's Case, 120 U. S. 1 (1886).

[1] 99 N. E. Rep. 599 (Ill., 1912).

[2] 12 Cyc. 405.

[3] Wigmore, Evidence, Sects. 300, 306; Wharton, Criminal Evidence (10th Ed., 1912) Sect. 31; People v. Molineaux, 168 N. Y. 264, 293 (1901).